THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.9888 of 1998

ORAL ORDER:

This writ petition is filed seeking a Certiorari to call for the records in A.P.S.E.No.3 of 1997 dated 29.12.1997 on the file of the first respondent and quash the same as arbitrary and illegal and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits.

It is the case of the petitioner that she worked as Sales Girl in the Book Shop within the premises of Gunadala Matha Church compound at Gunadala for a long time since 10.5.1982 and the management of the Church Committee has also issued a service certificate to that effect. The Church compound offers various services to the pilgrims. The bookshop is situated within the premises contains lockets, books and other fancy items to be sold to the pilgrims and other such persons at a rate fixed by the management. While that being so, the petitioner was restrained from entering into the bookshop on 15.7.1993. Therefore, she got issued a legal notice and filed proceedings before the competent authority under Section 41 of the A.P. Shops and Establishments Act at Vijayawada. The said application was dismissed by the Assistant Commissioner of Labour on 2.8.1996. Questioning the same, she filed appeal before the appellate authority i.e. Deputy Commissioner of Labour, Zone-II at Eluru. Though the appellate authority held that the petitioner is an employee/workman in the bookshop maintained by the Church Committee and she worked for 11 years, instead of ordering for reinstatement and back wages, granted retrenchment compensation. Aggrieved by the same, the present writ petition is filed.

In spite of service of notice on the second respondent on 5.5.1998, none appeared on his behalf.

The learned counsel for petitioner strenuously contended that the competent authority has declared that there was an illegal retrenchment. Having made no whisper either by the management or the authority about loss of confidence on the petitioner, granting retrenchment compensation which is erroneous and the authority ought to have ordered for reinstatement with full back wages.

Heard the learned counsel for petitioner and perused the impugned order and other material made available on record.

The respondent authority gave a categorical finding that the shop where the petitioner was working is covered by A.P. Shops and Establishments Act, 1988 and Ex.A1-service certificate issued by the Church Committee clearly shows that the petitioner was employed as sales girl for about 11 years. Having admitted as to the issuance of service certificate, the respondent is estopped from deposing contrary to the documentary evidence that she was not an employee and as such, the authority held that there is an employee and employer relationship between the petitioner and the management. However, while granting relief, the authority had simply held that the petitioner is entitled for retrenchment compensation and not for reinstatement.

In my considered opinion, the authority erred in holding that the petitioner is entitled only for retrenchment compensation. In the facts and circumstances of the case, particularly on the basis of service certificate and also in the teeth of the findings that there was an employee and employer relationship, the termination of services of the petitioner was contrary to the provisions of Section 47 of A.P Shops and Establishments Act. The petitioner is entitled for reinstatement with full back wages and other attendant benefits, particularly in the absence of any pleadings particularly loss of confidence and faith in her. Therefore, the impugned order is liable to be modified.

In view of the same, the writ petition is disposed of modifying the order

directing the second respondent to reinstate the petitioner with continuity of service with full back wages and attendant benefits. No order as to costs.

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C.V.RAMULU,
J

Date: 18.4.2007

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.9888 of 1998

18.4.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.9888 of 1998

Date: 18th April, 2007

Between:

Balli Vasantha Kumari

.. Petitioner

And

The Deputy Commissioner of Labour,
Zone-II, Eluru, West Godavari district & another.

.. Respondents